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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
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Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[2 August 1996]

1. The International Federation of Human Rights (FIDH), and its affiliate in Turkey, the Human Rights Association (IHD), are extremely concerned by the massive and systematic violations of human rights in Turkey.

2. Despite the political commitments that Turkey has formulated before bodies of the European Union, and despite a few cosmetic reforms, the human rights situation in Turkey continues to deteriorate. Freedom of expression is still seriously limited by the Constitution itself and by many laws. Conditions of detention and the use of torture are particular areas of concern.

3. The Turkish Constitution of 7 November 1982, currently in force, was drawn up by the army, following the coup d'état of 12 September 1980. Although democratic in appearance, this Constitution does not establish a

democracy. According to its constitutional status, the National Security Council, a non-elected military body, has theoretically only consultative powers, but in point of fact, Parliament has never rejected any of its "advisory" decisions. Contrary to democracy's rationae, this means that the people's representatives depend on the military. On the question of freedoms, the Constitution of 1982 does contain some guarantees of respect for human rights, but they are accompanied by important reservations based on State protection and national unity. The citizens' freedom of expression, a sine qua non condition for democracy, is curtailed whenever it is used against the concept of unity and national uniformity, whenever it threatens "Turkishness" (arts. 2, 3, 26 and 28). Finally, the misuse of states of emergency and laws of exception constitute a serious obstacle to freedom of opinion and freedom of expression.

4. In Turkey, there are 152 laws whose sole purpose is to regulate freedom of opinion and freedom of expression. The laws on the media, based on the notion of crime against the State and of separatist propaganda, allow the seizure or banning of newspapers and the sentencing of journalists and editors to prison terms. The Penal Code lays down the death penalty for separatist propaganda (art. 125), attempts to overthrow the Government by violent means (art. 146), it provides prison terms from one to six years for affront to "Turkishness", to the Republic, etc. (art. 159), and up to three years' imprisonment for the destruction of the Turkish flag (art. 145). Hence, three members of HADEP (the pro-Kurdish party) were arrested last June, and stand accused of having burnt the national flag (Turkish Daily News of 26 June 1996).

5. Within the legislative arsenal restricting freedom of expression in Turkey, the provision most frequently used is article 8 of the "law to combat terrorism" (so-called "anti-terrorist law"), No. 3713 of 12 April 1991. Under international pressure, in particular exerted during the forty-seventh session of the Sub-Commission, the Grand National Assembly of Turkey, on 27 October 1995, amended article 8 of the anti-terrorist law, but only superficially: the sentence was reduced but the definition of the crime remained unchanged. Article 8 still prohibits written or oral propaganda, assemblies and demonstrations aimed at destroying the indivisibility of the Turkish Republic, territory or nation. The review of article 8 last October resulted only in the deletion of the phrase "whatever the means, intention or ideas may be" - a point which jurisprudence did not heed in any event - a reduction in the prison sentence (one to three years instead of two to five), and the possibility of commuting the sentence of imprisonment to a fine. The effect of these amendments is a purely superficial reform, given that the notion of the indivisible unity of the Republic is still invoked and interpreted very broadly by judges in all cases, closely or remotely related to the Kurdish question. The reform provides that people tried on the basis of the previous version of article 8 are eligible for retrial, but rarely are people released following a retrial: 5,500 others, prosecuted under article 8 of the anti-terrorist law, will most probably be reconvicted. Article 8, even as amended, still defines a political crime, and it is mainly on this charge that Turkish prisons continue to be filled.

6. The anti-terrorist law affects the whole of society: journalists (according to the 1995 annual report of the Commission for the Protection of Journalists (CPJ), Turkey is the most repressive of all countries towards the media, principally because of article 8 of the anti-terrorist law); publishers (e.g. Ayse Nur Zarkolu, director of the "Belge" publishing house, is currently being tried on several counts); authors (e.g. Yaser Kernal, given a 20-month suspended prison sentence on 7 March 1996 because of an article he wrote condemning the repression of the Kurdish minority); deputies (six Kurdish deputies are in prison); political parties (the labour party (EP) was banned in June 1996); trade unions; students; human rights activists, etc. Seventeen members of the IHD are being prosecuted on the basis of article 8 of the anti-terrorist law. They are accused of having published an article entitled "The sole solution is peace" in their bulletin, on the occasion of World Peace Day, 1 September 1995, and also, through the ideas contained in this article, of having disseminated separatist propaganda against the indivisible unity of the Turkish Republic. The indictment states that the authors' demand for political rights for the ethnic groups which form part of the Turkish nation is a crime. However, the incriminating article is no more than an appeal for peace and a call for an end to the war which has been waged for some years on Turkish territory against the Kurds whose rights are being disregarded.

7. The FIDH and the IHD call on the Turkish authorities to repeal article 8 of the anti-terrorist law without delay and in its entirety.

8. Concerning the six Kurdish deputies who have been sentenced to 10 years' imprisonment for separatist crimes (in the case of Leyla Zana, for having spoken in Kurdish in the Parliament, criticized the Turkish Government abroad, worn clothes in Kurdish colours, etc.), the FIDH and the IHD are concerned about their continuing detention and about the Turkish Government's silence, following a declaration by the United Nations Working Group on Arbitrary Detention, on the initiative of the FIDH, that these detentions are arbitrary. In its decision No. 40/1995 of 30 November 1995, the Working Group considered that the way in which the trial of the Kurdish deputies was conducted was a violation of international norms concerning a fair trial, in particular those concerning the right to defence and the principle of the independence of the judiciary (arts. 10 and 11 of the Universal Declaration of Human Rights and arts. 14, paras. 1 and 2 of the International Covenant on Civil and Political Rights).

9. The FIDH and the IHD are asking the Turkish Republic on the one hand to take into account the Working Group's decision and to release the Kurdish deputies (only two of them have been released, although all were convicted on the same ground) and, on the other hand, to sign and ratify the International Covenant on Civil and Political Rights, its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights.

10. The regular renewal of the state of emergency in south-eastern Turkey is imposing on this region not a state of emergency, but a permanent regime of discrimination. In March 1996, the Turkish Parliament voted to extend the state of emergency in the 10 south-eastern provinces (Bitlis, Tunceli, Simak, Mardin, Van, Hakkari, Diyarbakir, Batman, Bingöl and Siirt).

11. Violence has steadily increased in the south-east of Turkey. Despite the disastrous failure of its military methods, the Government's answer to the Kurdish problem is still exclusively a military one. Thousands of villages have been evacuated and set on fire, and thousands of Kurds have been forced to move towards western Turkey or towards the big cities in the east of the country. The 15 million Kurds in Turkey, mostly gathered in the south-east, are thus, little by little, being scattered over the whole country.

12. The IHD balance-sheet for 1995 is alarming: 231 disappearances during detention, 122 extrajudicial executions, 321 killings by unknown assailants, 57 deaths in detention following torture, 1,412 cases of alleged torture, etc. These macabre figures continued to increase between January and May 1996: the IHD has catalogued 82 extrajudicial executions and deaths in prison following torture.

13. The Turkish police act with quasi-total impunity. According to the observer mandated by the FIDH, one of the few trials of this kind involving 19 policemen (accused of shooting and killing three members of the revolutionary left-wing organization Devrimci Sol in April 1992, instead of arresting them), offers no guarantees of impartiality and looks like a show trial. An increase in the number of killings by unknown assailants forced the Turkish Parliament to open a commission of inquiry on 9 February 1993. However, this commission's report could not be adopted by deputies because it implicated the Government.

14. Torture is practised systematically in Turkish prisons and police stations. Despite this established fact, confirmed by international bodies, the recommendations of the European Committee on the Prevention of Torture in 1992, and those of the United Nations Committee against Torture in 1993 have not been implemented by the Turkish authorities, notably giving every detainee an opportunity to consult a lawyer and reducing the maximum length of pre-trial detention.

15. The FIDH and the IHD call upon the Turkish Government to take all necessary steps to end the practice of torture in Turkey, in accordance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Turkey.

16. Conditions of detention in Turkey are appalling: overcrowded prisons, ill-treatment, torture, moving of detainees from one prison to another to make it difficult for a lawyer or the family to visit them or to justify postponing a hearing on the grounds that the accused was absent, etc. Prisoners went on hunger strike in August 1995 to try to get some improvements in prison conditions and, more recently, between May and 28 July 1996, when over 100 prisoners took part. Twelve of them died after more than 65 days on hunger strike.

17. Considering that flagrant and systematic violations of human rights in Turkey are a result first and foremost of Turkey's Constitution and laws, the International Federation of Human Rights and the Human Rights Association in Turkey call upon the Turkish authorities to undertake the constitutional

and legislative reforms necessary to bring Turkey's domestic law into line with the Universal Declaration of Human Rights and other international human rights instruments to which this State has subscribed.

18. Considering, not only the provisions of Turkey's domestic legislation but also the practices which ensue, the FIDH and IHD call upon the Sub-Commission to condemn the lack of any initiative - or only fictitious ones - by the Turkish authorities in this connection, and in particular persisting flagrant breaches of the right to the freedom of opinion and of expression, and request the Sub-Commission to recommend to the Commission the creation of a monitoring mechanism.